United Nations S/2003/1042

Security Council

Distr.: General
30 October 2003

Original: English

Letter dated 23 October 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 18 September 2003 (S/2003/906).

The Counter-Terrorism Committee has received the attached third report from Belize submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-59446 (E) 141103

Annex

Letter dated 20 October 2003 from the Permanent Representative of Belize to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I refer to your letter of 18 July 2003, in which you requested additional information regarding Belize's implementation of Security Council resolution 1373 (2001). Belize's third report, responding to the questions set forth in the above-mentioned letter, is attached hereto (see enclosure).*

(*Signed*) H.E. Mr. Stuart W. **Leslie**
Ambassador and Permanent Representative of Belize

* Annexes are on file with the Secretariat and are available for consultation.

Enclosure

Third report of the Government of Belize to the Counter-Terrorism Committee

The Government of Belize is pleased to provide its responses to the questions and comments of the Counter Terrorism Committee (CTC) transmitted by letter of the Chairman, H.E. Mr. Inocencio Arias, dated 18 July 2003. For accuracy in referencing, the numbering style of the letter has been maintained for the responses.

1. Implementation Measures

1.1 These are further comments in compliance with the CTC's request for additional information on the Government of Belize's implementation of the Resolution.

1.2 (a) Although the Money Laundering (Prevention) Act[1] provides at section 3:01 that "[a] person who, ... engages in terrorism commits an offence and shall be liable on conviction to the same penalties as for money laundering ...," "terrorism" as defined under the Act at section 2 (infra) does not encompass the collection of funds for terrorist purposes and financing of terrorism. In essence, therefore, the Money Laundering (Prevention) Act does not specifically criminalize the collection of funds for terrorist purposes and the financing of terrorism either inside or outside the territory of Belize. It does however provide at section 11:01 for the freezing of funds connected to terrorism and particularly the financing of terrorism as described in the response at 1.2 (b) following.

(b) For the purpose of anti-money laundering supervision, the Money Laundering (Prevention) Act establishes a Supervisory Authority. Amongst other powers, the Act empowers the Supervisory Authority to freeze funds connected with terrorism. Section 11:01 (1) specifically provides that "[w]here the Supervisory Authority has reasonable grounds for believing that the person by, for or on behalf of whom any funds are held is or may be-

(a) a person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism, or who finances such acts;

(b) a person controlled or owned directly or indirectly by a person in (a), or

(c) a person acting on behalf, or at the direction, of a person in (a)

[1] Chapter 104, Laws of Belize, Revised Edition 2003.

the Supervisory Authority may by notice direct that those funds shall be frozen and shall not be made available to any person."[2] Notably, section 11:01(1)(a) gives the Supervisory Authority wide discretion to freeze funds of a person described in sub paragraphs (a) (b) or (c) who finances or may finance terrorist acts even if no transfer of funds from one country to another takes place, or even if the funds are legal in origin.

Section 23(6) of the Act provides broader enabling powers to the Supervisory Authority to "take such action as may be appropriate including the freezing of funds and other financial assets or economic resources of any person to comply or give effect to a resolution of the Security Council of the United Nations adopted under Chapter VII of the United Nations Charter ..." In this context, relevant Security Council resolutions could also form the basis for the Supervisory Authority to freeze funds connected with terrorism.

Finally, the CTC has indicated that acts which are to be criminalized can be committed even if they do not take place or are not intended to take place inside Belize or even if no related terrorist act actually occurs. As indicated above, section 3:01 provides for the criminalization of terrorism. Terrorism as defined at section 2 of the Act means:

> "... *the use or threat of action where –*
>
> ***(a)*** *(i) the action falls within sub-paragraph* ***(b)****,*
> *(ii) the use or threat is designed to influence the government or to intimidate the public or a section of the public; and*
> *(iii) the use or threat is made for the purpose of advancing a political, religious or ideological cause;*
>
> ***(b)*** *action falls within this sub-paragraph if it –*
> *(i) involves serious violence against a person;*
> *(ii) involves serious damage to property;*
> *(iii) endangers a person's life, other than that of the person committing the action;*
> *(iv) creates a serious risk to the health or safety of the public or a section of the public, or*
> *(v) is designed seriously to interfere with or seriously to disrupt an electronic system;*

[2] For the purposes of the Act "person" means "any entity, natural or juridical, including among others, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, capable of acquiring rights or entering into obligations.

(c) the use or threat of action falling within sub - paragraph (b) which involves the use of firearms or explosives is terrorism whether or not sub-paragraph(a) (ii) is satisfied;

(d) in sub-paragraphs (a), (b) and (c)-
(i) "action" includes action outside Belize;
(ii) a reference to any person or to property is a reference to any person, or to property, wherever situated;
(iii) a reference to the public includes a reference to the public of a country other than that of Belize;
(iv) "the government" means the government of Belize or of a country other than Belize."

Based on this definition of terrorism, the criminalization of terrorism at section 3:01 (supra) contemplates acts that take place outside of Belize as well as the mere threat of action (i.e. intended and not realized) whether within or outside of Belize.

1.3 Although there is no specific legislation for registering, auditing and monitoring the collection and use of funds and other resources by religious, charitable and other associations, with a view to ensuring that these are not diverted to purposes other than their stated purposes, in particular to the financing of terrorism, all charitable, religious and any other associations are required to incorporate as a company under the Companies Act of Belize[3] and are thereafter produced in a Companies Register kept at the Companies Registry. This register is available for searches by any member of the public on the payment of the required fee. This, it is submitted, is a way of keeping track of which associations are formed within Belize. Section 12 of the Money Laundering (Prevention) Act (hereinafter "the Act") imposes an obligation on financial institutions to keep a business transaction record of any business transaction for a period of five years and to allow the Supervisory Authority to enter and inspect the records kept. Further, as provided at section 13 of the same Act, financial institutions are obligated to pay special attention to all complex, unusual or large business transactions or unusual patterns of transactions whether completed or not and to all unusual transactions and to insignificant but periodic transactions which have no apparent economic or lawful purpose. Should they become suspicious that any transaction could constitute or be related to money laundering, they are to promptly report it to the Supervisory Authority and should they fail to comply with the requirements of the Act, criminal sanctions are imposed. The Supervisory Authority or law enforcement agency also has the power to apply to a judge of the Supreme Court for a search warrant pursuant to section 14 or a property tracking and monitoring order pursuant to section 15 of the Act in a situation where there are reasonable grounds for believing *inter alia* that a person has committed, is committing or is about to commit a money laundering offence. Further, a person leaving Belize is obligated under section 18 of the Act to report to the Supervisory Authority if he intends to carry an amount of money exceeding twenty thousand dollars in cash or negotiable bearer instruments (in

[3] Chapter 250, Laws of Belize, Revised Edition 2000.

Belize currency or equivalent foreign currency); failure to do so carries with it criminal sanctions. Altogether, these mechanisms serve to monitor financial activities with the aim of preventing and eventually eradicating money laundering practices.

1.4 In light of the CTC's comment on Belize's response in its second report (S/2003/485) to sub-paragraph 2(a), Belize shall identify the appropriate legislation through its comprehensive review of compliance with Security Council resolution 1373.

1.5 There is no legislation addressing the requirement stipulated in sub-paragraph 2(d) of Resolution 1373 viz., that States are required to prevent those who finance, plan, support or commit terrorist acts from using their respective territories for those purposes against other States or their citizens. In order to be in compliance with this sub-paragraph, Belize is seeking to review the matter and enact enabling legislation.

1.6 Section 9 of the Money Laundering (Prevention) Act[4] specifically provides that "*Notwithstanding anything to the contrary contained in any other law, the offences created by this Act shall be investigated, tried, judged and sentenced by a court in Belize regardless of whether or not the prescribed offence occurred in Belize or in another territorial jurisdiction, but without prejudice to extradition when applicable in accordance with the law.*"

The offences created under the present Act are the offence of money laundering at section 3 and the offence of terrorism at section 3:01. Thus, though generally Belizean courts do not have jurisdiction to try persons found in Belize for offences committed outside Belize, certain pieces of legislation have created exceptions, as in the present situation. The latter part of the section, however, has the effect of limiting the exercise of the court's jurisdiction to instances where extradition agreements are not applicable according to the law.

1.7 Every extradition is conditional on the treaty existing between Belize and the Requesting State[5] or the Requested State.[6] Since each treaty is separately negotiated, the procedure to be followed in each differs in accordance with the differences in their respective legal regimes.

Where Belize refuses to extradite an individual, the question whether the courts of Belize can prosecute the individual for the offence for which the extradition was originally sought will depend on the circumstances of the particular case. If Belize refuses to extradite an individual despite the existence of an extradition treaty between Belize and the Requesting State, it may be due to several reasons. It could be because the offence does not constitute an extraditable offence or because Belize has the better jurisdiction and is therefore the *forum conveniens*. Belize could have a better jurisdiction if Belize has a better interest; for example, the offender

[4] *Supra* note 1.

[5] State requesting extradition of an individual or individuals from Belize.

[6] State from whom Belize is requesting the extradition of an individual or individuals.

is a citizen of Belize and the offence was committed in Belize against a national of the Requesting State.

Section 7 of the Extradition Act[7] provides that where the Chief Magistrate dismisses the charge against the person in respect of whom an application for extradition has been made, the Director of Public Prosecutions (hereinafter "the DPP") may require the said Magistrate to transmit to him all evidence and documents connected with the case – and the Magistrate will be duty-bound to comply forthwith. If the DPP is of the opinion that the charge should not have been dismissed, the DPP may apply to the Supreme Court for a warrant of arrest of the accused person. If the Court is of the opinion that the charges should not have been dismissed, it may make such order as the Magistrate should have made. A copy of the Extradition Act is annexed to the present report.

Where no extradition treaty exists between Belize and the Requesting State, the question whether the courts of Belize can prosecute an individual for the offence for which the extradition was originally sought, after Belize has refused to extradite the individual, will be governed by the common law of Belize and the rules of international law on the issue of *forum conveniens*.. The courts of Belize will have jurisdiction to prosecute the individual if the act he committed constitutes an offence under the laws of Belize, and the said offence was committed in Belize. A greater degree of jurisdiction will arise if the individual is a citizen of Belize and/or if the offence was committed against a Belizean national.

1.8 Belize recalls its response to operative paragraph 2, sub-paragraph (g) of its initial report, document S/2001/1265 dated 27 December 2001. The Department of Immigration and Nationality Services is in charge of border control and of issuing nationality certificates. Background security checks are conducted on applicants and should there be any suspicion, an investigation into the identity of the individual is launched. The Belize Defence Force along with the Belize Police Department conduct frequent border patrols at key border crossing areas especially between the Belize/Guatemala border. Together, these agencies conduct operations within our borders and territorial waters targeting offences pertaining to their respective agency. Should there be caution on a certain individual(s), All Points Bulletins (APBs) are posted at every point of entry and at all police stations throughout the country for a lookout on that certain individual(s). Although the processing of entrants is manual, many officers possess training in identification of false documentation. There are also mechanisms such as the ultraviolet lamps ("black lights") which are used to verify the authenticity of documents such as passports which are equipped with certain security features. Apart from these measures, Belize has not enacted specific legislative measures to address the matter.

1.9 Belize has undertaken treaty action in respect of nine of the 12 international instruments related to the prevention and suppression of international terrorism. Accordingly, Belize is a state party to the following conventions:

[7] Chapter 112, Laws of Belize, Revised Edition 2000.

a. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons
b. International Convention for the Suppression of Terrorist Bombings
c. Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation
d. Hague Convention for the Unlawful Seizure of Aircraft
e. Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft
f. Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
g. Convention against the Taking of Hostages

Further, Belize has signed onto the:

h. International Convention for the Suppression of the Financing of Terrorism
i. Convention on the Marking of Plastic Explosives for the Purpose of Detection

On 16 September 2003, the Cabinet agreed to recommend Senate approval of Belize's ratification of the International Convention for the Suppression of the Financing of Terrorism.

The other conventions including the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Convention on the Physical Protection of Nuclear Materials, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf have not yet been recommended for Senate approval.

1.10 To date, no additional legislative measures have been implemented to prevent the granting of refugee status from being abused by terrorists, their facilitators and their supporters beyond those measures addressed in Belize's initial report, document S/2001/1265, at operative paragraph 3, sub-paragraphs (f) and (g).

The Government of Belize remains committed to the full implementation of Security Council Resolution 1373. To this end and also prompted by the questions and comments of the Counter Terrorism Committee, Belize is in the process of conducting a comprehensive reviewing of its compliance with the said resolution with the aim of enacting measures including legislative and administrative measures which would enable Belize's full compliance therewith.